

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

RODNEY CONLEY,

Petitioner, :

Case No. 2:11-cv-1142

- vs -

Warden, Ross Correctional
Instutition,

District Judge James L. Graham
Magistrate Judge Michael R. Merz

Respondent. :

REPORT AND RECOMMENDATIONS REGARDING APPEAL

This habeas corpus case is before the Court on Petitioner's Motion for Certificate of Appeal (Doc. No. 32), received by the Clerk of the Sixth Circuit Court of Appeals on December 2, 2013, and forwarded by her to the Clerk of this Court for filing, which also occurred on December 2, 2013. Similarly on December 16, 2013, the Clerk of the Court of Appeals received, and forwarded to the Clerk of this Court for filing, Petitioner's Motion for Leave of Court to Proceed with Presentation of Delayed Notice of Appeal Shown Due to Extraordinary Circumstances (Doc. No. 33).

On September 5, 2013, District Judge Graham adopted the Report and Recommendations of Magistrate Judge Merz on the merits of this case, dismissing the Petition with prejudice, denying a certificate of appealability, and certifying that an appeal would not be taken in good faith (Doc. No. 30). Under Fed. R. App. P. 4(a)(1)(A), a notice of appeal was due to be filed not later than October 5, 2013. Under Fed. R. App. P. 4(a)(5)(A), this Court may grant an extension of time to appeal if a motion requesting that extension is filed "no later than 30 days after the

time prescribed by this Rule 4(a) expires; . . .” To take advantage of this provision, Conley would have had to file for extension in this Court not later than November 4, 2013. Under Fed. R. App. P. 4(a)(6), the Court can reopen time to file an appeal if it finds the moving party did not receive notice, but the docket reflects mailing to Conley on September 5, 2013.

Thus Conley’s Notice of Appeal is untimely and this Court lacks any authority to extend his time. Moreover, this Court has already determined on the merits that a certificate of appealability should not issue and that any appeal would not be in objective good faith. Therefore the two pending Motions (Doc. Nos. 32 & 33) should be DENIED.

December 20, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party’s objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).